IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No. 153 of 1995

Date of decision : September 11, 2007.

Sakeel

... Petitioner

versus

State of Haryana

... Respondent

Coram: Hon'ble Mr. Justice A.N. Jindal

Present: Mr. P.K. Rana, Advocate for
Mr. Raj Mohan Singh, Advocate
for the petitioner.

Mr. K.S. Godara, DAG, Haryana
for the respondent.

A.N. Jindal, J

Assailed in this revision petition is the judgment dated 25.2.1995 passed by the learned Additional Sessions Judge, Jagadhri, dismissing the appeal of the petitioner-accused Sakeel (hereinafter referred to as 'the petitioner'), against the judgment dated 9/16.12.1993 passed by the Chief Judicial Magistrate, Jagadhri, convicting him under Section 16 (1) (a) (i) of the Prevention of the Food Adulteration Act, 1954 (hereinafter referred to as 'the Act') and sentencing him to undergo rigorous imprisonment for six months and to pay fine of Rs.1000/-.

Sh.R.D. Goel, District Food Inspector, Ambala, in his complaint alleged that on 23.4.1988, at about 10.30 AM, the petitioner was found in possession of two drums of Cow milk for sale. He was intercepted and 750 grams of Cow's milk was purchased from him. The milk so purchased was divided into three equal parts and after mixing formaline, it

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was put into three dry and clean bottles which were sealed according to rules and proper seal was affixed. One part of the sample in a sealed condition along with memorandum in Form No.VII was sent to Public Analyst, Haryana, Chandigarh for analysis. The remaining two parts of the samples were deposited with the Local Health Authority. Report so received revealed that the milk fat constituents were found 5.4 % while milk solid not fat was found 7.7% and thus deficiency in the milk solids not fat was to the tune of 0.8% though as per report Ex.PE it was wrongly mentioned as .9%. Report of the Public Analyst Ex.PE was served upon the petitioner, thereafter, the complaint was filed.

At trial, the complainant examined R.D. Goyal, (complainant himself), Food Inspector (PW1), J.P. Sharma (PW2) and Piyare Lal (PW3).

The trial ended in conviction. The appeal was also dismissed. Hence this revision petition.

The sole point raised by the learned counsel for the petitioner before me is that, had there been adulteration in the milk, then with the addition of any foreign substance or water, both milk solid not fat and fat, should have proportionately been reduced. Deficiency of milk solid only and not in the fat may indicate that either the sample was not properly analysed or the cow was not properly fed. To the contrary, Mr. K.S. Godara, learned Deputy Advocate General, Haryana urged that the Public Analyst report does not meet with the standards as laid down in the rules. The percentage of various constituents of milk as disclosed by the Public Analyst could be sufficient to deduce a conclusion that there was over all deficiency of milk constituents. The article did not meet with prescribed

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standard.

Having deliberated over the matter, the arguments advanced by the learned Deputy Advocate General, Haryana, appear to be not appealing whereas, in support of his arguments, various judgments have been referred by the learned counsel for the petitioner. It has been laid down in case ***Hans Raj vs. The State of Punjab, 1980 (2) Food Adulteration Cases 396,*** as under :-

> *"When the fat content in the milk is much higher than the minimum prescribed standard, it had necessarily to be inferred that no water had been added to the milk and that the no fatty solid contained below the standard prescribed could justify that either the cow from the udders of which the milk was drawn was not given the proper feed or that the Public Analyst's report was erroneous but not the inference that the milk in question was not pure."*

Again in case ***Ujagar Singh vs. The State of Punjab, 1980 (1) FAC 432***, it was observed as under :-

> *"The percentage of milk fat and non-fatty milk solids depends on the proper feeding and health of the animal. There is a problem of non-availability of nourishing and sufficient quantity of food for the cattle, both green and otherwise. The quantity of food given to an animal affects to certain extent, the quantity and quality of milk produced by it. Apparently it is not possible to take out non fatty solids from milk without reducing or affecting the fat contents. As such in this case it cannot be said that the accused-petitioner intentionally effected any adulteration in the milk."*

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This Court, in a subsequent case titled as ***State of Punjab vs. Mohinder Singh, 1991(3) RCR (Criminal) 304,*** approved the aforesaid two judgments and observed as under :-

> *"..... When the milk is found deficient in milk solids not fat it cannot be said that the milk is adulterated but the only inference that can be drawn is that the cow was not properly fed....."*

In the similar circumstances of the case, the Apex Court has approved the view of this Court in case ***Administrator of the City of Nagpur vs. Laxman and another 1995 Supp. (1) Supreme Court cases 247*** and observed as under :-

> *".... Learned Magistrate who acquitted the respondent who was a small milk vendor noted that the fat percentage is 6% as against 3.5% which is more than the standard prescribed for cow milk. The only shortfall was that S.N.F. was 7.3% where it ought to have been 8.5%. Further, it noted that the total solids are 13.3% which is again more than the satisfying standard of cow milk. Under these circumstances we cannot say that courts below have erred in acquitting them giving the benefit of doubt to the respondents. The appeal is, therefore, dismissed. However, other question of law which have been debated by the courts below do not really matter, therefore, we do not propose to examine the same."*

In ***Ujagar Singh's*** case (supra), the Public Analyst had found

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the milk fat to the extent of 3.5% and the milk solids not fat 7.3%. In the instant case also, the percentage of the fat is higher than the prescribed standard, whereas the ratio of milk solid not fat, is deficient by only 0.8%, therefore, inference could be drawn that either the sample was not properly taken or analyzed or that the cow was not properly fed. The aforesaid factors were not taken care of by the Appellate Court while upholding the judgment passed by the Magistrate. The view formed by the Appellate Court in ignorance of law of the land on the point, therefore, interference in the impugned judgment has become inevitable.

Consequently, I accept the revision petition, set aside the impugned judgment, acquit the petitioner of the charge framed against him and direct him to be set at liberty forthwith. Bail bond and surety bond stand discharged. Fine, if deposited by him, may be refunded.

September 11, 2007 **(A.N. Jindal)**
'deepak' **Judge**

To be referred to Reporter: Yes/No.